IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1995 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

RAGHUNATH GANGARAM DESHMUKH

Versus

SUMANTKUMAR NAGINDAS SHAH

Appearance:

MR KG SHETH for Petitioners

MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/07/98

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act.

2. Brief facts are that the disputed accommodation consisting of ground floor and first floor was let out to

the defendantg No.1 on monthly rent of Rs.10/-. He fell in arrears of rent with effect from 1.6.1978. Ten months rent fell due from him and as such notice of demand dated 3.4.1979 was sent which was served on 12.4.1979. Neither the notice was complied with nor the premises was vacated. Hence the Suit for eviction, recovery of arrears of rent and mesne profit wasfiled. Eviction was also sought on the ground that the defendant No.1 had illegally sub-let the ground floor portion to the defendant No.2.

3. The trial Court found that these two grounds for tenant's eviction were made out. Accordingly the Suit was decreed.

4. An Appeal was preferred which was dismissed. Hence this revision.

5. The first point for consideration is whether the Decree for eviction on ground of tenants' falling in arrears of rent for more than six months is in accordance with law. The learned Counsel for the respondent contended that on both these issues, viz. default of the tenant and sub-letting there are concurrent findings of the two courts below. Hence the revisional Court will be reluctant to interfere with such findings even if the revisional courtfinds that another view can be taken from the evidence on record. Actually it is not a case of re-assessment of evidence which is to be done by the revisional court. The revisional court on the other hand has to see whether the Decree of two Courts below is in accordance with law or not.

6. Admittedly the tenant was in arrears of rent for 10 months. The rent fell due from 1.6.1976. Notice of demand was issued on 3.4.1979 which was served on 12.4.1979. The tenant has admitted that he did not reply the notice. He, however, pleaded that he went to tender the rent to the plaintiff after service of notice, but the plaintiff refused to accept it. This plea of tenant was disbelieved by the two courts below. The finding of fact on this plea hardly requires any interference. The fact, therefore, remain that after receipt of notice the tenant neither paid the rent to the landlord nor tendered the same to the landlord. No tender was made by Money Order as has been observed by the lower Appellate Court.

7. The dispute regarding standard rent was also not raised at the earliest opportunity inasmuch as no reply notice was given. The summons of the suit was served on the tenant on 9.9.1979. He appeared on 10.9.1979. He

applied for time to file written statement. On this day he deposited Rs.100/- being 10 months rent but did not raise dispute regarding the standard rent. The dispute regarding standard rent was raised for the first time in the written statement. It was therefore not a case where the dispute regarding the standard rent was raised for the first time at the earliest opportunity. This dispute was not bonafide dispute regarding the standard rent.

8. The question of nature of payment of rent also requires to be considered in order to appreciate the provision of Section 12(3)(a) of the Act. Education cess is payable by the tenant under the Gujarat Education Cess Act. Evidently the rate of rent was Rs.10/- p.m. The Government of Gujarat has amended the Gujarat Education Cess Act and provided that the tenants paying rent below Rs.25/- p.m. are not required to pay education cess. Consequently the tenant who was paying Rs.10/- p.m. only as rent was not required to pay education cess.The rent was therefore payable monthly. These two ingredients of Section 12(3)(a) are thus made out, but so far as the third ingredient is concerned unless it is established that valid notice of demand was served and the tenant failed to pay rent within a month of service of such valid notice no suit for eviction can be decreed under Section 12(3)(a) of the Act.

9. The learned Counsel for the revisionist pointed out that in the notice Ex.18 there is no specific demand of rent and as such notice is invalid and is not in accordance with Section 12(2) of the Act. The learned Counsel for the respondent on the other hand contended that in the notice it is mentioned that 10 months rent at the rate of Rs.10/- p.m.amounting to Rs.100/- was due from defendant No.1 hence this is sufficient compliance of notice of demand. I am, however, unable to agree with this contention. For a notice of demand to be valid notice the landlord is not to serve a vague notice. A notice cannot be said to be valid merely because information is given to the tenant that he is in arrears of rent for 10 months at the rate of Rs.10/- p.m. amounting to Rs.100/only. There was no specific word asking the tenant to pay the rent to the landlord. This information could be treated by the tenant as simple information that he was in arrears of rent, but the notice was vague in the sense that it never conveyed any instruction to the tenant whether the rent should be paid or not and if it is to be paid whether it is to be paid to the landlord or to the counsel sending the notice on behalf of the landlord.

10. Section 12(2) of the Bombay Rent Act provides that no suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of standard rent until the expiration of one month next after notice in writing of the demand of the standard rent has been served upon the tenant in the manner provided under Section 106 of the Transfer of Property Act.

11. The words "Notice in writing of the demand of standard rent" are significant. The notice of demand, according to this section, should be a written notice. Such notice should be clear and not vague. Further in such notice the demand of the rent should be specifically made. Of course notice is not to be interpreted with a view to finding unnecessary fault with it. However, on a plain reading of the notice it is clear that though it is a written notice but since there is no demand asking the tenant to pay arrears of rent within a month it becomes invalid notice of demand. If the notice of demand is invalid the last ingredient of Sec.12(3)(a) is not made out and as such the Decree for eviction of this ground passed by the two courts below is contrary to law hence interference in revision is permissible.

12. The learned Counsel for the revisionist next contended that in view of Section 12(1) of the Act no decree for eviction can be passed because the tenant was always ready and willing to pay the rent at all times. He argued that at first the entire rent demanded was deposited in Court on 10.9.1979 and thereafter regular deposits at interval amounting to Rs.230/- were made in the trial Court. However, the question of readiness and willingness of the tenant to pay rent becomes meaningless once the case goes out of the ambit of Section 12(3)(a) of the Act.

13. Coming to the next point, viz. whether the defendant No.1 had sub-let the accommodation on the ground floor to the defendant No.2, it is not a pure question of fact which cannot be interfered in this revision. The sub-tenancy as well as illegal sub-tenancy involves mixed question of law and fact. Consequently it has to be seen whether ingredients of sub-tenancy have been made out by the landlord or not.

14. Sub-tenancy is always a secret contract hardly within the knowledgeof the landlord. The landlord therefore can not establish by direct evidence as to what were the terms of the contract of tenancy. Likewise it is difficult for the landlord to adduce direct evidence

regarding payment of rent by the sub-tenant to the tenant in chief. However, despite these difficult initial burden on the landlord to establish sub-tenancy is not shifted on the shoulders of the tenant. How such burden is to be discharged by the landlord has been described in various pronouncement of this Court as well as the Apex Court. Two main ingredients have been emphasised from time to time. The first is that the landlord should establish that the tenant in chief has parted with exclusive possession of either the entire or a portion of the tenanted accommodation. The second essential ingredient is that such parting of possession should be for valuable consideration.

15. On the first point the two Courts below have recorded categorical finding that the defendant No.2 is in exclusive possession of the ground floor portion. However, this finding alone is not enough to establish the plea of sub-tenancy.

16. The second ingredient, viz. the transfer of possession for valuable consideration is not established in the instant case. No doubt it is difficult for the landlord to establish by direct evidence that the sub-tenant had been paying rent to the tenant in chief, but still since the onus lies upon the landlord to establish that the transfer of possession was for valuable consideration by circumstancial evidence and also from circumstances it can be inferred that such transfer must have been for valuable consideration. However, there is no cogent evidence on record to establish nor is there any clinching circumstance for coming to the conclusion that the so called transfer of possession was for valuable consideration.

17. The case of the tenant in chief is that the defendant No.2 was residing with him since 1951, viz. since inception of tenancy. No doubt there is contradictory stand of the defendant No.1 on this point. At one stage he pleaded that the defendant No.2 is his real brother, but in witness box he stated that defendant No.2 is his cousin brother (uncle's son). However, this contradiction alone is not sufficient for holding that the defendant No.2 is not a relation of the defendant No.1. It is not established from the evidence on record that the defendant No.2 is a stranger occupying the ground floor portion. Unless there is cogent evidence to show that the defendant No.2 is a stranger no duty is cast upon the defendant No.1 to explain in what capacity the stranger is residing on the ground floor portion.

18. Non-examination of the defendant No.2 was also taken serious note of by the appellate Court. Like wise not filing written statement by the defendant No.2 was also taken notice of by the two courts below. However, multiplicity of evidence is not the requirement of law. If relationship between the defendants can be established by one of the defendants it was not necessary for him to burden the record with more oral evidence. The statement of the defendant No.1 on the point of relationship hardly went controverted. On minor contradiction whether the defendant No.2 is real brother of defendant No.1 or his cousin brother, the defendant No.1 could not be disbelieved. Thus, if it is established that the defendant No.2 was residing on the ground floor as relation of the defendant No.1 it cannot be said that he is sub-tenant. The tenant is entitled to keep his relation with him. If the ground floor portion was given to the cousin for the sake of convenience and privacy no inference can be drawn that it was done by transfer of exclusive possession and that to for valuable consideration. Merely because the defendant No.2 obtained seperate ration card is also not a ground for holding the sub-tenancy. If the mess is not common and the defendant No.2 obtained seperate ration card it does not necessarily follow that he is sub-tenant occupying portion for valuable consideration from the tenant in chief. Thus the second ingredient for establishing the sub-tenancy is also not proved.

19. Since the essential ingredients to establish sub-tenancy were not established in accordance with law the Judgments and Decrees of the two Courts below on this ground are also rendered contrary to law. Interference in this revision on the above two ground is perfectly justified.

20. In the result the revision succeeds and hereby allow. The Judgment and Decree of the two Courts below directing eviction of the revisionists from the tenanted accommodation is set aside. The rent already deposited in the court may be withdrawn by the landlord - respondent. In the circumstances of the case the parties shall bear their own costs. sd/-

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